COLLEGII FEVDALIS

DISPVTATIO IIII.

DE INVESTITVRA,

Quam,

D. O. M. A.

SVB PRÆSIDIO CLARISSIMI ET CONSVLTISS. VIRI, Dn. THOMAE FRANTZII, *I. C. & feudalis iuris in illustri Academia VVitebergensi Professoris Publici, pro virili defendet,*

ANDREAS REICHE, S. M.

XII. Calend. August. Hora & loco consuetis,

WITEBERGÆ,

Typis M. Georgij Mulleri.

Anno M. D. XCVI.

THESIS I.

Modus dandi feuda præcipuus est investitura:

HÆc ab investiendo alibi investitio dicta, (a) est feudi concesio. (b) Eaq; per se & effectus ratione, simplex & unica est. Adjunctorum ratione, propria: quæ est actualis possessionis concessio: vel abusiva: cum scipione, gladio, vel alio corporeo porrecto, dominus investituram facere se dicit: (c) Beneficij veteris aut novi: Scripto aut sine scripto facta. (d)

(a) Tropicè à vestiendo germanis einkleiden / [illegible] in vocabulo investitura lib. 1. feud. tit. 26. vers. test. [illegible] c. un. tit. 28. feud. 1. Hattys. analys. feud. c. 10. Diss. [illegible] in vocab. investitura. (b) Hattysrus d. l. c. un. [illegible] controvers. fuerit, c. 1. quid sit investitura. L[illegible] 7. [illegible] d. feud. c. 7. n. 5. Diss. Zas. d. feud. part 5 [illegible] quid sit investitura n. 2. (c) Franzius ad c. 7. [illegible] competere, l ult. d. feud. c. 7. n. 11. c. 1. quid sit invest. [illegible] d. l. n. 3 [illegible] d. l. Invest. tamen abusiva, sin res oculis [illegible] possessio [illegible] tribuit: sin minus, baculus vel aliud instrumentum traditum, est pro feudi ce[illegible] signo & argumento. [illegible] l. 1. § si jusserim, quod meo § si venditorem d. acquir. poss. [illegible] d. l. [illegible] ad d. tit. quid sit invest. n. 2. & Ma[illegible] d [illegible] n. 4. [illegible] in § [illegible]eudum q. 36. n. 1 (d) c. un. per [illegible] d. c. 1. quid sit invest. tit. 32. d. feud. 2. Hott. ad [illegible] 2 [illegible] 2.

II.

Investire omnes possunt, qui feudum dare possunt, modo liberam rerum suarum [illegible] habeant, etiam fœmina. (a) Minor autem non aliter, quam si investitura de veteri sit beneficio. (b)

(a) c. 1. per quos fi. d. c. & tit. § fœminam c. un. d. invest. vet. & novi ben[illegible]. Cujat. ibid. & ad tit. per quos fiat invest. D (b) tit. 91. d. feud. 2. d. c. 1. per quos fiat invest. Ratio evidens est, quod hujusmodi investitura nihil alienatur, sed tantum dominium, quod ante investituram in succedentem transit, confirmetur: adeoq; abusive investitura dicitur, l. cum heredes in pr. ff. d. acquir. poss. d. c. 1. per quos fiat invest. Laud. tit. 1. feud. 2. n. 20. Terr[illegible]r. Mon[illegible] lib. 3.

lib. 3. Feud. c. 1. fol. 63. Sic tutor & curator absente pupillo vel minore antiquum beneficium conferre possunt, per d. rationem & l. [illegible] §. 2. & 3. ff. de reb. eor. qui sub tut. Et omnium bonorum procurator l. procurator. ff. d. procuratorib. arg. tit. 85. d. feud. 2. Cujac. lib. d. c. 1. § sed utrum per quos fiat invest. Ferrar. lib. 2. [illegible] feud. cap. [illegible] fol. 34. B.

III.

Vt feudum plenissimo jure vasallus consequatur, num utraque investitura requiratur? Et duobus investitis, priore abusivâ, posteriore propria investiturâ, quinam potior habeatur: Tum num de feudo incertæ personæ valeat investitura? Controversi juris est. Nos utramvis investituram sufficere: (a) propria investitura investitum potiorem haberi: (b) De incertæ personæ feudo, investituram valere: (c) putamus.

(a) c. 1. in pr. d. con[illegible]. rel. feud. c. 1. quid sit invest. & ibi Alvar. n. 2. [illegible]. Land[illegible]. ad tit. 2. feud. 2. v. 12. & 13. Mozz. in cap. d. [illegible] feud. Quæ r[illegible] lvee [illegible] comment: Dn. Franz: d. c. 7. [illegible] fero compe[illegible]. (b) Iul: cla: in §. feudum. q. 36. n. 2. And: d. [illegible] in §. si facta tit. 2[illegible] d. feud. 2. & Matth: d. Afflict: ibi n. 4. Vl[illegible] cap. 8. n. 1[illegible]. [illegible] tamen cogitur prius investitio tradere aliud feudum ejusdem bonitatis [illegible] d. invest. de re aliena fact: c. un: tit: 25. d. feud: 2. vel ejus æstimationem, puta nummos d. c. un: tit: 25. Hartm: pist: q. 29. n. 3. nec interesse dando liberatur §. si facta tit: 26. d. feud: 2. Etsi dominus dixerit se alteri salvo jure primi possidere. Zas. part: 6. n. 13. Nihil enim interest verbis an facto pœnitentiam dominus declaret l. in quibus 32. ff. d. ll. Hartm: in anal[illegible] feud: c. 9. in fin. [illegible] 4. cent. obs. 61. n. 5. & [illegible] Dis[illegible]. Zas: d. parte 6. de feud. n. 1[illegible]. Secus si investitura tantummodo promissa. Mynsing: [illegible] n. 14. Land: in d. §. si facta. Zas: d. part: & n. (c) c. un: qui success. teneantur c. [illegible] tit: 26. d. feud: 2. c. un: de feudo dato in vic: leg: com: reprob: [illegible] a Valle cons[illegible] n. 44. Land: ad tit: 27. de feud: 1. n. 8. Ubi tamen interest: quod [illegible] investituram a defuncto factam tenetur confirmare, d. c. un: qui success: teneantur. Quod fit ratione success: l. si ab eo 7. ff. de liberali causa. l. ex qua persona 149. de R. I. Secus in clericis d. c. un: qui success: ten: secundum [illegible] in c. un: d. clerico qui invest: [illegible], And: Gail: 2. obs: ult: Borcu: de feud: cap. 7. n. 10. & seqq:

IIII.

Investituri debent, qui feudum vel succesionis vel novo jure habent, modo fidelitatem præstare parati sint. (a) Investitura verò fidelitatem præcedat. (b) Est autem fidelitas, hoc loco, jusjurandum, quod à vasallo præstatur domino. (c)

(a) c. 1. per quos fiat invest: in pr: & ibi § fœminam in fin: [illegible] c. 7. n. 19. & accipitur per procuratorem vel nuncium a vasallo missum, c. 1 § utrum. per quos fiat invest: c. 1. §. item investitura: d. notis feud: Borcholt: cap: 7. n. 25. (b) c. un: quid præcedere debeat, c. un: in fin: d. nova form: fidel: Laud. ad c. un: §. nulla autem invest: per quos fiat invest: n. 14. Hunt: de feud: cap. 26. in pr: Duar: c. 7. n. 9. (c) d. c. un: in fin: quid præcedere debeat. Præstatur fidelitas a [illegible] vasallo, vel ejus procuratore. arg: c. un: § personam, per quos fiat [illegible] tutore & curatore [illegible] de [illegible] feud: n. 16. [illegible]: c. 7. n. 34. [illegible] c. [illegible] d. perjur: arg: c. verum 7. [illegible], & ibi Cujac. [illegible] qui e[illegible] u[illegible]tur ætate vel [illegible], ut infantes & pupilli & qui [illegible] comparantur furiosi c. un: §. si minori. si de feudo def: cont: fuer: Potest hoc juramentum vasallo remitti, fidelitas, quæ forma feudi est, non potest. c. un: in fin: per quos fiat invest: vide thes: 5. [illegible]: 1. c. un: § 1 quæ fuit prima caussa ben.

V.

Fit investitura pure, in diem, vel sub conditione (a) facto vel jure possibili. (b)

(a) c. un: [illegible] & ibi Laud: n. 4. [illegible] ult: c. 7. n. 44. (b) l. [illegible] 3 d. [illegible]. I. § conditiones I. d. [illegible] l. [illegible] C. de pactis § [illegible] de inutil: stipul: l. generaliter d. [illegible] l. juris gentium [illegible] de pactis l. 6. C. eod. Conditio autem in mortem vasalli concepta jure licita [illegible] un: § [illegible] d. feud: def: [illegible] cap: n. 43. Gail: lib: 2. [illegible] 150 n. 2. & [illegible]: quæ conditionem [illegible] ad investitis [illegible]: d. c. un: qui succes[illegible]: ter: Laud: [illegible]. 5. vide [illegible]: 3. [illegible] [illegible] hujusmodi conditiones de [illegible] feudo, quod [illegible] ratur rediturum ad dominum: non minus tamen firma erit investitura facta d. feudo ejus, qui [illegible] jam liberos habet, vel post factam investituram suscepit, d. c. un: in fin: qui succes[illegible]: d. § [illegible]. [illegible]: q. 25. [illegible] cap: 7. n. 49. & seqq: Quod si feudum ob vasalli [illegible] ad dominum redierit, conditio in mortem vasalli concepta, non impleta videtur, atq; nec

investi-

... ad heredes investiti devolvetur: ... Breves in c. qui succes. teu; & ad d. § ... Lib. 1. ... d. c. 7. n. 52.

VI.

Petenda est investitura beneficij veteris intra annum & diem. (a) Novi beneficij investituræ petendæ, certum tempus definitum non est: tribus tamen vicibus ad fidelitatem præstandam citatus vasallus, si nolit feudo cadere, comparebit. (b)

(a) *c. un. § fin: de prohib: feud: alienat: per Lother: c. un: in pr: in ... de prohib: feudi alienat: per Fridericum c. un: in pr: quæ fuit in prima caussa beneficij amittendi, c. un: tit: 97. d. feud: 2. Hattys: in analys: feud: cap: 9. Cujac: de feud: lib: 1. cap: 21. VVesb: cap: 8. n. 3. Ulr: Zas: part. 7. n. 1. Laud: ad tit: 22. de feud: 1. n. 1. & 12. MoZZ: de substantia feudi, n. 46. Mynsing: 4. obs: 9. n. 1.* (b) *c. un § 1. quæ fuit prima caussa benef: amit: & ibi Laud: & § præterea, n 4. de prohib: feudi alien: per Frideric: VVes: d. c. 8. n. 2. c. un: de milite vasallo Hattys: d. c 9.*

VII.

Vasallus moritur intra tempus petendæ investituræ; num successori ejus integrum tempus denuò concedatur? (a) Et num minor in petendæ investituræ tempore lapsus restituatur? (b) quæritur. Utrumq; putamus.

(a) *c. un: in pr: quæ fuit prima caussa ben: am: Zas: part: 7. n. 7. Laud: ad tit: 22. de feud: 1. n. 18. Mins: d. obs: 9. n. 6.* (b) *arg: c. un. § si minori ... feudo def: controv: Vult: d. c. 7. n. 66. c. un: vers: præterea ... prohib: feud: al: per Fridericum, & ibi Laud: n. 9. Zas: d. part: 7. n. 8. Clarus in § feudum q. 49. n. 5.*

VIII.

Intra prædicta tempora, si vasallus investituram non petierit, feudo cadit. Nisi justa negligentiæ caussa subsit; Ut si tempus ... prorogatum domini & vasalli consensu: (a) Absentia domini, (b) inimicitiæ capitales inter dominum & Vasallum, justa vasalli absentia, (c) infantia, (d) &c.

(a) *Strad: p. 6. c. 2. n. 18. Item: de Marinis de generibus feud: tit: 2. n. 54. Ferrar: Montan: lib: 3. c. 6. vers: 6.* (b) *c. un: tit: 22. de feud: 1. Hottom: cons: 32. n. 13. arg: l. Mævia in fin: ff. de annuis leg: sive justa, sive injusta caussa sit. Vult: d. c. 7. n. 74.*

 (c) d. c.

(c) *d. c. un: tit: 22. de feud: 1 Vult: d. c. n. 75. & ſeqq: Land: ad d. c. un:* (d) *d. c. un: Et excuſat à petitione inveſtituræ uſq; ad annum 14. c. un: verſ: præterea, de prob: feud: alien: per Frid: Et ibi Laud: n. 4. Hottom: d. conſ: n. 4. Clarus in ſ. feudum q. 49. n. 4.*

VIIII.

Perficitur inveſtitura feudi novi & ſecularis coram paribus curiæ: (*a*) Antiqui feudi etiam coram extraneis. (*b*) Eccleſiaſtici inveſtitura coram paribus, vel extraneis conferri poteſt.

(a) c. un: quid ſit inveſt: c. 1. ſ. fin: de feudo Guardiæ c. un: qui ſucceſſ: feud: dar: ten: Duar: c. 7. n. 3. Et ſufficiunt duo teſtes c. un: ſ. ſi quis, ſi de inveſt. inter dominum & vaſallum c. un: ſ. quod autem. de notis feudorum Vult: d. c. 7. n. 22. Zaſ: p. 6. [illegible] Diſſ: Hottom: ad c. 1. quid ſit inveſt: Cujac: ibidem. [illegible] præſentibus teſtibus non paribus, inveſtitura nulla eſt d. c. un: quid ſit inveſt: Vlt e[illegible]. c. 8. n. 14. quod ſi pares inveſtituræ [illegible] tempore non adfuerint; admittuntur extranei c. un: in pr: ſi de inveſt: inter dominum. Et ibi Cujac: & lib: 4. de feu: tit: [illegible] Diſſ: Land: [illegible] d. c. un: ſi de inveſt: inter dominum n. 11. Si [illegible] dominus pares non habet, ſufficit extraneos adhibuiſſe. c. un: quid ſit inveſt. c. un: ſ. quod autem, de conſuet: recti feudi [illegible] ſ. quod [illegible] feud. Hallyſ: in analyſ: feud: d. c. 9. (b) *c. un. verſ. [illegible] qui teſtes ſint neceſ: ad nov: feud: [illegible] de feud. [illegible] (c) c. un: verſ: in clericorum, ſi de inveſt: inter dominum & vaſallum [illegible] Hott: Vult: d. c. 7. n. 28. [illegible] ſi clericus inveſtiat de feudo non eccleſiaſtico, c. un: qui teſtes ſint neceſ: In ſecularibus enim laicis clerici æquiparantur, argumento c. un: de clerico qui inveſt: fecit Borch: d. c. [illegible]. 28.*

X.

Atque hoc modo ſine ſcriptis conficitur inveſtitura: In ſcriptis fit per inſtrumentum publicum, (*a*) ſed num neceſſario requiratur, ut omnis inveſtitura ſcriptis comprehendatur? quæſtionis eſt. (*b*) Negantium melior quàm affirmantium eſt ratio.

(a) c. un: verſ. ſi autem inveſt: quid ſit inveſt: c. un: in fin: ſi de feudo vaſallus ab alio interpel. Sed & teſtium ſubſcriptio neceſſaria eſt. parium ſcilicet curiæ, ſi ſunt, c. 1. qui teſt: ſint neceſſ. ad prob: inveſt: c. un: quid ſit inveſt. Si abfuerint aut non ſint, ſufficit inſtrumen-

strumentum publicum, d. c. un: vers: si autem investitura c. un: vers: sed si dominus. si de feud: vasal: ab al: interpet: Vult: d. c. 7. n. 42. Quin & domini sigillum impressum sufficit, c. inter dilectos, d. fide instrumentorum, Laud: ad tit: si d. invest: feud controv. n. 19. & seqq: (b) d. c. un: qui testes sint necess: d. c. un: vers: sed si dominus, Vult: d. b: cap: 8. n. 31. Adhibetur enim tantum ob futuram rei memoriam, ut & in aliis contractibus l. pactum 17. C. de pactis. Hott: de feud: cap: 25. in fin.

XI.

Emergente igitur inter dominum & vasallum controversia, prædictis modis, aut testibus aut instrumento probari investitura poterit.

Dictis testib: Laud: ad tit: 4. de feud: 1. n. 13. 14. & seqq: Paris de puteo de reintegrat: Feud: cap: 234. Borcholt. cap: 7. n. 46.

XII.

Renovatio investituræ toties necessaria est, quoties domini vel vasalli persona mutatur,

c. un: in pr: per quos fiat invest: c. un: qui testes sunt necess: c. 1. [illegible] Clarus d. §. feudum q. 49. n. 1 [illegible] de feud: c. 27. [illegible] plures vasalli heredes sint, omnib. debetur investitura, c. un: [illegible] de feudi def. controv: fuer: Zas. p. 7. n. [illegible] c. 8. n. [illegible] c. 7. n. 9. Possunt tamen plures vasalli heredes unum eligere, qui omnium nomine investituram petat, & fidelitatem præstet, Zas: & Vult: scrib: dd. locis c: un: tit. 79. d. feud: 2. Clarus d. §. feudum q. 49. n. 11.

XIII.

Investitura hoc modo rite perfecta, debetur domino fidelitas, vasallo rei beneficiatæ ususfructus. (a) Nanciscitur namque possessionem, tam per propriam quam abusivam investituram. (b) Unde rem a quolibet possidente, etiam directo domino vindicare potest. Alium a quo convenitur exceptione summovebit, (c) Aliisq; modis licitis re utetur. (d)

(a) c. un: in fin: de nov: form: fid: c. un: § fœminam per quos fiat invest: tot: tit: [illegible] re deb: vasallus, & de forma fidel: c. un: §. hujus autem generis. In quibus caussis feud: amit: & ibi Hott: d. c. un: de nov: form: fid: (b) c. un: in pr: quid sit invest: c. un: §. si facta. si de feud: def. controv: & per l. is qui actionem 15. de R. I. (c) c. un: tit: 43. de feud: 2. c. un: §. si vero vasallus

de

de mil: vas: qui contumax d. c. un: tit: 43. Nam cui datur actio si etiam conceditur exceptio l. invitus 156. de R. I. Laud: ad tit: in quibus caussis feud: am: no. 10. VVesenb: c. 9. v. 4. Zas: p. 6. n. 37. (d) deducit enim meliorationes c. un: §. si vasallus. Hic finitur lex. Potest feudum dividere §. firmiter. vers: praeterea. de prohib: feud: al: per Frid. Locare &c. c. un: § donare. Qualiter olim pot: feud: al. Subinfeudare, certis tamen ll. c. un. § 1. per quos fiat invest: §. similiter d. l. Conradi c. un: de feud: non. hab: prop: feud: naturam. c. un: in pr: vers: callidis d. prohib: feud: al: per Frid: Hattyf: in Analys: 10. c. Reliqua vide latè apud Duar: c. 12. Clarus §. feudum q. 39.

F I N I S.